

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**SUSAN L HILLGARTNER**  
Claimant

**APPEAL NO. 09A-UI-10546-N**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VARIETY DISTRIBUTORS INC**  
Employer

**OC: 06/07/09**  
**Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Susan Hillgartner filed a timely appeal from a representative's decision dated July 15, 2009, reference 01, which held the claimant not eligible to receive unemployment insurance benefits based upon her separation from Variety Distributors, Inc. After due notice a hearing was scheduled for and held in Council Bluffs, Iowa on August 19, 2009. Ms. Hillgartner participated personally. The employer participated by Mr. Don Lantz, General Manager/Chief Operating Officer and Ms. Sherry Kaufman, Current Human Resource Director. Employer's Exhibits One through Ten and Claimant's Exhibits A through D were received into evidence.

**ISSUE:**

The issue is whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Susan Hillgartner was employed by Variety Distributors, Inc. from September 9, 1998 until June 10, 2009 when she voluntarily quit employment. Ms. Hillgartner had been employed as a full-time Human Resource Manager and was paid by salary. Her immediate supervisor was Don Lantz.

Ms. Hillgartner had been experiencing personal problems with two or more individuals employed by Variety Distributors in management positions. The claimant believed that the individuals had been shunning her, talking about her and therefore making her duties as a Human Resource Manager more difficult. In May 2008 The claimant, the two other employees and a number of other management employees had been required to attend a trade show in Kansas City. Ms. Hillgartner had left the show early because of her perceived treatment by some employees related to the conflict. The claimant e-mailed the company's general manager a formal complaint about the employees and their treatment and indicated that in her position as Human Resource Manager her responsibilities were being negatively impacted by the conduct of the employees, Brad Lydon and Mariene Brensel. In the e:mail Ms. Hillgartner indicated that she was considering leaving employment but wished to remain employed and requested Mr. Lantz to resolve the issue. (See Exhibit One) The company's general manager who was aware of the

ongoing personality dispute interviewed a number of individuals and concluded based upon the nature of the conflict and the problems they presented to Ms. Hillgartner as the company's Human Resource Manager a change in the claimant's job responsibilities would be the best solution. Mr. Lantz met with the claimant on May 6, 2009 and discussed the conflict and what actions to take. During the meeting the claimant stated that she didn't care what job or title she had with the company but "just needed a paycheck." The claimant requested that she be informed of any change in her job first.

After reviewing the matter Mr. Lantz determined that the best solution was to remove some of the claimant's human resource duties from her job that were related to hiring, firing or disciplining employees. Ms. Hillgartner was informed on May 7, 2009 that she would receive the same pay and that a position would be created as "office manager" the claimant's performance would be evaluated after 90 days following the normal procedures the company had utilized when placing other individuals in job positions. Mr. Lantz then began reviewing job duties that were to be assigned to the claimant in her new management position.

Although the claimant had seemed to agree to the change, the claimant was observed later that day removing numerous tote boxes of personal belongings from her office. The claimant continued to remove personal belongings from her office area that night. Ms. Hillgartner called in sick the next day Friday, May 8. The following week the claimant requested and was granted time away from work under the provisions of the Family Medical Leave Act. Because the employer was unsure based upon the claimant's actions whether Ms. Hillgartner intended to actually return to employment, the company posted an advertisement in a local newspaper for a job position similar to that offered to the claimant. While on FMLA leave, the parties exchanged voice mails. The claimant stating at one point, "Wouldn't it be better if you just terminated me?" The employer responded that they wished to continue to employ Ms. Hillgartner. Medical documentation was received and the claimant continued to be on Family medical leave until June 11, 2009.

Ms. Hillgartner returned on Thursday, June 11, 2009 and met with Mr. Lantz and Ms. Kaufman, the new Human Resource Manager that had taken the claimant's previous job responsibilities. At that time the parties began to discuss the claimant's new job responsibility as "office manager." Prior to the conclusion of the meeting, Ms. Hillgartner submitted a pre-prepared resignation letter dated June 11, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. See Iowa Code section 96.6(2) (amended 1998).

The evidence in the record establishes that the claimant was the moving party in initially requesting that the employer take action to resolve problems that she was experiencing with two

or more individuals in management that were affecting her duties as the company's Human Resource Manager. Based upon the claimant's complaint, the company's general manager proposed a change in the claimant's job responsibilities and the claimant indicated her agreement stating that she didn't care what her job or title was but only that she continued to receive a paycheck. When Ms. Hillgartner was informed that she was going to be changed to a newly created position of Office Manager, the claimant appeared to be agreeable.

Although the claimant had seemed to agree, her conduct led the employer to be apprehensive of whether the claimant planned to return to work. The claimant had removed her personal belongings from the office areas and had not again reported for work for a substantial period of time using the Family Medical Leave Act and had not responded to a number of telephone inquiries. In an attempt to insure adequate staffing if the claimant did not choose to later return, the company placed an advertisement in a local newspaper for a job position similar to that that offered to the claimant. The company's intent was to continue to employ the claimant. Upon her return she presented a pre-prepared resignation letter during the meeting that was held to determine her exact work duties in her new position.

The administrative law judge concludes that the employer was making a good faith effort to comply with the claimant's requests by assigning her a new job position. The change was at the claimant's request and was reasonable under the attendant circumstances. The claimant's leaving was not attributable to the employer. Benefits are withheld.

**DECISION:**

The representative's decision dated July 15, 2009, reference 01, is affirmed. The claimant is disqualified until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided that she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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